



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2017 Biennium

<b>Bill #</b>	SB0336	<b>Title:</b>	Generally revise the Montana administrative procedure act
<b>Primary Sponsor:</b>	Keenan, Bob	<b>Status:</b>	As Introduced

- |                                                           |                                                        |                                                          |
|-----------------------------------------------------------|--------------------------------------------------------|----------------------------------------------------------|
| <input type="checkbox"/> Significant Local Gov Impact     | <input type="checkbox"/> Needs to be included in HB 2  | <input checked="" type="checkbox"/> Technical Concerns   |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

### FISCAL SUMMARY

	<u>FY 2016 Difference</u>	<u>FY 2017 Difference</u>	<u>FY 2018 Difference</u>	<u>FY 2019 Difference</u>
<b>Expenditures:</b>				
General Fund	Unable to determine	Unable to determine	Unable to determine	Unable to determine
<b>Revenue:</b>				
General Fund	Unable to determine	Unable to determine	Unable to determine	Unable to determine
<b>Net Impact-General Fund Balance:</b>	Unable to determine	Unable to determine	Unable to determine	Unable to determine

**Description of fiscal impact:** SB 336 requires additional reporting during and after the rulemaking process for rules that concern the delivery of Medicaid services. New Section 1 requires that identified data collection methods and metrics be included in the rulemaking process and subsequent reporting processes. Per New Section 1 (4), these duties are required to be performed within existing resources. Additionally, SB 336 expands the parties allowed to request an economic impact statement to businesses, contractors and/or elected officials. This will affect a number of state agencies with rulemaking authority. However, agencies are unable to predict how many requests for economic impact statements might be solicited as a result of this rulemaking process change and as a result, the fiscal impact is unknown.

### FISCAL ANALYSIS

#### Assumptions:

#### Department of Public Health and Human Services (DPHHS)

1. Pre-identification of the data collection methods and metrics that will be used to measure achievement against the purpose of the rule.
  - a. The Office of Legal Affairs (OLA) will incur one-time personal services costs (attorney and support staff) to change rule drafting forms used across DPHHS.
  - b. DPHHS will incur ongoing personal services costs (attorney and support staff) to conduct training for the Department's staff regarding the bill's requirements.

2. Within one year of the rule implementation, DPHHS must issue a statement of findings regarding outcomes.
  - a. Data trends often take multiple years from the implementation of a rule to develop and show up in the claims and/or expenditure data. The department assumes it will report on the outcomes as they exist, or do not exist, as required only at the one year reporting increment.
  - b. DPHHS will incur ongoing personal services costs (attorney and support staff) to analyze all identified metric(s) and prepare a statement of findings.
3. New Section 1 requires performance-based rulemaking costs be absorbed within existing resources.
4. DPHHS is unable to estimate the increased number of economic impact statements that will be requested.

**Department of Labor and Industry (DLI)**

5. Approximately 75% of agency rulemaking is opposed by at least one commenter.
6. Elected officials are not limited to state legislators and include local municipal, county, and school district officials.
7. The scope of rulemaking varies widely from narrow changes affecting only a few situations to broad changes that affect many persons statewide.
8. The average estimated time to prepare an economic impact statement is 60 hours of staff time, including attorney time.
9. DLI and its attached boards and commissions file approximately 80 to 125 rulemaking proposals a year.
10. The total number of rulemaking proposals filed by all state agencies exceeds 1,000 per year.
11. DLI is unable to estimate the increased number of economic impact statements that will be requested.

**Department of Administration (DOA), Department of Commerce (DOC), Department of Environmental Quality (DEQ)**

12. Although this bill appears to be directed to rulemaking authority in the Department of Public Health and Human Services, the proposed modifications in Section 2 would apply to all state agencies with rulemaking authority. The proposed revisions will make rulemaking more time consuming.
13. Due to the complexity of the analyses and the increased number of requests, it is likely additional FTE or contracted services will be needed to complete the scope of work required by this bill.
14. It is not possible to estimate the increased costs to agencies at this time.

**Technical Notes:**

**Department of Public Health and Human Services (DPHHS)**

1. The fiscal note is written assuming the bill sponsor intended to measure health outcomes that can be measured within a specific time period. Many policy changes affect health outcomes over various years and cannot be measured in a one year period of time.
2. One measure or metric can't always determine if the outcome achieved is due to the individual rule, because of the impacts of other factors such as caseload and utilization changes, other rule changes, and broad economic circumstance.
3. New Section 1 (2), lines 28-29, re: electronic notices – The department's interested parties list contains several parties who receive rulemaking notification via regular mail. Confining the department to electronic notification only will leave out these traditional notice recipients and may contradict MCA §2-4-302(2)(a)(ii) which makes electronic notification optional.

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4. The classes of private persons allowed to demand an economic impact statement (businesses and contractors) versus those who do not have that right (non-business entities and individuals who are not contractors) may present an equal protection issue.

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*Sponsor's Initials*

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*Date*

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*Budget Director's Initials*

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*Date*